

APPEAL NO. 010515

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 7, 2001. With respect to the issue before her, the hearing officer determined that the appellant's (claimant) _____, compensable left thigh injury does not extend to and include the left knee, left ankle, left hip, neck, and low back. In his appeal, the claimant asserts that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

At issue in this case is whether the hearing officer erred in determining that the claimant's compensable injury did not extend to his left knee, left ankle, left hip, neck, and low back. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Nothing in our review of the record reveals that the hearing officer's determination that the claimant's compensable injury did not extend to his left knee, left ankle, left hip, neck, and low back is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. In his appeal, the claimant also contends that the hearing officer's decision is "based on prejudice" against the claimant's choice of treating doctor. Our review of the record does not reveal evidence of any such bias or prejudice on the part of the hearing officer. Rather, it appears that the hearing officer was resolving conflicts in the evidence and making her credibility determinations, as she, the fact finder, was required to do.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge